

Office of

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: August 27, 1993

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Benefits Election

In a memorandum dated July 8, 1993, in which you refer to San Diego City Charter ("Charter") section 143.1, you ask us to evaluate the circumstances under which the system is obligated to conduct benefit elections. You point out that benefit changes to the San Diego City Employees' Retirement System ("SDCERS") almost always result from the meet and confer process and as a part of that process the benefit changes must be approved by both management and the affected labor organizations. What you imply is that, under those circumstances, benefit elections appear to be a burdensome duplication of effort. Suffice it to say, for whatever reasons (a debate over which could surely rage on for several hours), tinkering with SDCERS benefits has become the norm in recent years and benefit elections an unpleasant fact of life for your staff.

Charter section 143.1 reads as follows:

Sec. 143.1 Approval of Amendments by Members

No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system.

No ordinance amending the retirement system which affects the vested defined benefits of any retiree of such retirement system shall be adopted without the approval of a majority vote of the affected

retirees of said retirement system.

In my quest to discover the true purpose and meaning of Charter section 143.1, I could find no case law or attorney opinions shedding light on the subject. However, in the dusty archives, I did find three Special Benefit Election Reports ("Reports") issued by the Board of Administration ("Board") between the years 1965 and 1970. Each of these Reports was issued at a time when major benefit changes were proposed.

In reading these Reports, I found it ironic and somewhat amusing that twenty-five (25) years later we are still struggling with some of the same issues. (See, proposed change No. 4 in the 1967 report and proposed change No. 6 in the 1970 report.) After reading the Reports, I think it is fair to say, and at least comforting to know, that we are conducting elections today under the same circumstances as we did twenty-five (25) years ago.

In each Report, the Board explained that an increase in contribution rates would be necessary to properly fund the new benefits. The changes were described to the employees as a "tradeoff;" higher benefits with higher contribution rates or the same benefits with no increase or a decrease in contribution rates. I was impressed by the thoroughness of the Reports and left with a feeling that the voting right is not something to be taken for granted or taken lightly.

The Board's fiduciary obligation is to manage the trust with a high degree of skill and care. One aspect of that responsibility concerns the provision of the trust instrument which grants members the right to vote upon changes in benefit levels. These Reports serve as a good reminder that the right to vote would be quite meaningless if members were not provided with enough information to make an informed decision. This, of course, brings the matter full circle back to the Board's responsibility; for if the Board does not provide this information to the membership, who will?

As trustees, Board members may not delegate to others the performance of acts they can reasonably be required to perform. Probate Code section 16012. When the Board does delegate its functions, which it necessarily and routinely does, they must nevertheless exercise general supervision over those who perform the delegated matters. Probate Code section 16012. City management and the labor organizations do not have access to the necessary actuarial expertise the Board routinely relies upon, nor are they accountable to the Board. For these reasons, we would advise against the Board relying upon the meet and confer process to fully inform members with respect to the consequences of any benefit change.

In conclusion, the Board is presently conducting benefit elections under appropriate circumstances. The Board could, and probably should devote more effort to providing information to the membership in connection with those elections. In the near future, when major changes to the plan are proposed with respect to death benefits, division of community property assets and disability benefits, I recommend that the Board issue informational reports to the membership fully describing those changes, similar to the attached Reports.
If you have any questions, please give me a call.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay
Deputy City Attorney

RAD:mrh:352

Attachment

ms-93-6